Supreme Court, U. S.
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In The
SUPREME COURT OF THE UNITED STATES
October Term, 1979

No. 79-1728

HOT SPRINGS COUNTY SCHOOL DISTRICT
NUMBER ONE, et al,
Petitioners,

vs.

WASHAKIE COUNTY SCHOOL DISTRICT
NUMBER ONE, et al,
Respondents.

Petition for Writ of Certiorari
to the Supreme Court of the
STATE OF WYOMING

BRIEF FOR RESPONDENTS
(Appellants below)
In Opposition

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Petition for Writ of Certiorari to the Supreme Court of the

STATE OF WYOMING

BRIEF FOR RESPONDENTS

(Appellants below)

In Opposition

To the Honorable Court:

Come now the Respondents (Appellants below) and pursuant to the provisions of Rule 24 of the Rules of this Honorable Court, respectfully file this brief in opposition to the petition for a writ of Certiorari in this case.

QUESTIONS PRESENTED FOR REVIEW

The Respondents submit that the only questions presented for review in this case are the following:

I. WHETHER OR NOT THE PETITIONERS WERE DENIED DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS WHEN THE WYOMING SUPREME COURT RESOLVED A CASE BY TAKING JUDICIAL NOTICE OF OFFICIAL STATISTICS OF THE WYOMING DEPARTMENT OF EDUCATION AND WHEN PETITIONERS (APPELLEES BELOW) DID NOT USE THE WYOMING PROCEDURES FOR CHALLENGING THE TAKING OF JUDICIAL NOTICE.

II. WHETHER OR NOT THE PETITIONERS, AS SCHOOL DISTRICTS, HAVE STANDING AS PERSONS ENTITLED TO CLAIM RIGHTS OF DUE PROCESS AND EQUAL PROTECTION UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

STATEMENT OF FACTS

This case arose upon the filing of a Complaint for Declaratory Judgment, which sought a declaration that the Wyoming system of financing public education was in violation of the Wyoming Constitution. Record on appeal in the Court below, at 3-10.

The Plaintiffs consisted of three school districts, and various people associated with these school districts. The Defendants consisted of several Wyoming officials and the eight richest school districts in the state of Wyoming. Two of these school districts, Hot Springs Number One and Sublette County Number Nine, are the Petitioners herein, and these two school districts were also the parties who petitioned the Wyoming Supreme Court for a new hearing.

When the case was filed, the Defendants immediately took action to have the case resolved without a factual hearing by moving to dismiss on points of law. Record on appeal in the Court below, at 45-88. Thereafter the trial court sought to have the factual matters resolved by stipulation as part of a certified question procedure to the Wyoming Supreme Court. Defendants resisted this, however, even when the Plaintiffs offered to stipulate to almost all of the factual material considered important by the instant Petitioners. This offer was made because such factual materials came almost entirely from official records. Record on Appeal in the Court below, at 209-246, esp. pp. 235-241.

When the Wyoming Supreme Court decided

the case, they did so by taking judicial notice of some of these official records, primarily the official statistics of the Wyoming Department of Public Education. Washakie County School District Number One v. Herschler, Wyo. 606 P.2d 310, at p. 322 and footnote 16. Based upon these, which showed huge disparities between the taxing powers of Wyoming school districts, and the monies available for the education of Wyoming's children, the Wyoming Supreme Court decided that the Wyoming system of financing public education violated Wyoming's Constitution:

> These disparities demonstrated throughout by the various statistical tables can lead to but one conclusion: the quality of a child's education in Wyoming, measured in terms of dollars available for that purpose, is dependent upon the property tax resources of his school district. The right to an education cannot constitutionally be conditioned on wealth in that such a measure does not afford equal protection. Serrano v. Priest, 1971, 5 Cal. 3d 584, 96 Cal. Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187; Serrano v. Priest, 1976, 18 Cal. 3d 728, 135 Cal. Rptr. 345,

557 P.2d 929; Horton v. Meskill, 1977, 172 Conn. 615, 376 A.2d 359.

Washakie County School District No. One v. Herschler, Id at 332.

In an earlier case, the Wyoming Supreme Court had also taken judicial notice of official statistics of the Wyoming Department of Education and had then declared that the Wyoming system of financing public education violated the Wyoming Constitution. Sweetwater County Planning Committee for Organization of School Districts v. Hinkle, 491 P.2d 1234, 1236-1237 (Wyo. 1971). The Court stated in this 1971 opinion that it expected the system to be changed; the Wyoming Legislature failed to do so, however.

In oral argument before the Wyoming Supreme Court, the question was raised as to whether or not the Court should take judicial notice of statistics from the Wyoming Department of Education, as was done in Hinkle. These respondents took the position that the Wyoming Supreme Court should do so.

The procedure regarding judicial notice is spelled out for all Wyoming Courts in the Wyoming Rules of Evidence, Rule 201. Appendix A, p. A-1. Petitioners here, after the decision of the Wyoming Supreme Court, did not make a timely request for an opportunity to

be heard "as to the propriety of taking judicial notice and the tenor of the matter noticed," which procedure is described in Rule 201. In their Petition for Rehearing before the Wyoming Supreme Court the Petitioners argued the significance and import of the matters noticed by the Wyoming Court (Appendix to Petitioners Petition for Writ of Certiorari, F-10 et seq.) and, at one point, stated that "...the Appellees hasten to assure the court that pages of statistics such as the court has developed and used in this matter, can be stipulated without hesitation whenever material or relavent (sic)", but then Petitioners argued that they would require that additional information also be stipulated. Petition for Rehearing and Brief of Points and Authority before the Wyoming Supreme Court, at 18 (Appendix B, p. B-3).

Again, however, no request to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed, as required by Rule 201 (e), was made to the Wyoming Supreme Court after their decision.

The matter of standing arose early in this case, the defendants, including the instant petitioners, saying that none of the Plaintiffs had standing to bring the action under either the Wyoming or United States

Constitution. Record on Appeal in the Court below, at 102-107. These respondent school districts, even before the Trial Court, effectively conceded the point as to school districts with respect to the United States Constitution, saying:

"Under the United States Constitution, the school districts would most probably not have standing because the protections of the 14th amendment are personal." Record on Appeal in the Court below, at 139.

Respondents did contend, of course, that the school district plaintiffs had standing under the Wyoming Constitution. Despite the strong opposition of Defendants, citing such cases as Williams v. Mayor and City Council of Baltimore, 289 U.S. 36, 53 S.Ct. 431, 77 L.Ed. 1015 (1933), the Wyoming Supreme Court ruled in favor of Plaintiff school districts on this issue, though not on the basis of the United States Constitution. Brief of Appellees, before the Wyoming Supreme Court at 24; Washakie County School District No. One v. Herschler, supra, at 317.

ARGUMENT

I. The Petitioners seem to be asserting to this Court that the mere fact that the

Wyoming Supreme Court resolved the instant case without a factual hearing violated due process requirements.

But due process does not necessitate an evidentiary hearing in all cases. U.S. v. Wood, Wire, and Metal Lathers International Union, Local Union No. 46, 471 F.2d 408 (C.A.N.Y. 1973), cert. den. 412 U.S. 939, 37 L.Ed.2d 398, 93 S.Ct. 2773 (1973). These same Petitioners vigorously fought to prevent the respondents from receiving a trial on the merits of this case, first by seeking a dismissal as a matter of law and then by frustrating a proposed certified question procedure.

The central fact of this case is that the Wyoming Supreme Court simply took judicial notice of statistics from the Wyoming Department of Education, as they may under the Wyoming Rules of Evidence, and thus supplied with facts, ruled that these facts, as a matter of law, showed that the Wyoming system of financing public education violated the Wyoming Constitution. This Court has specifically held that a court may determine the constitutional validity of statutes based upon things which may be judicially noted. Weaver v. Palmer Bros. Co., 270 U.S. 402, 46 S.Ct. 320, 70 L.Ed. 654, 656 (1926).

The Wyoming Supreme Court, in taking judicial notice of the Wyoming Department of Education statistics, followed Rule 201 of the Wyoming Rules of Evidence. This rule is identical to the judicial notice rule of the federal courts.

Further, and this is a most important point, the Petitioners did not avail themselves of the opportunities for challenging the action of the Wyoming Supreme Court in taking judicial notice of official statistics of the Wyoming Department of Education. In fact, the statements of Petitioners in the various papers they have submitted show clearly that they did not really object to these official statistics. And how could they? For what could be more reliable or more central to this school finance case than the voluminous and complete statistics of the Wyoming Department of Education showing property valuations, school tax levies, monies received, monies spent, assessed value per student, and total revenue per student for all the school districts in Wyoming? See Washakie County School District No. One v. Herschler, 606 P.2d at 325-331.

What the Petitioners have challenged is the interpretation given the statistics

by the Wyoming Supreme Court. See Petition for Rehearing and Brief of Points and Authority (before the Wyoming Supreme Court), at 8-13 (Petitioner's F-8 to F-14), 16-19 (Appendix B).

In other words, what the Petitioners are really arguing here is the application of facts to the law and the construction given several Wyoming Constitutional provisions. But the law is very clear that this is not an appropriate matter for review by this Court, that such matters are for the exclusive determination of the state court. Louisville Gas & Electric Co. v. Coleman, 277 U.S. 32, 48 S.Ct. 423, 72 L.Ed. 770, 773 (1928).

This case, therefore, does not involve a question of due process at all. We respectfully submit that the authorities submitted by Petitioners are not in point and none of them show that in our circumstances there is or may be a violation of due process. The only cited case which is even near to ours is Ohio Telegraph Co. v. Public Utilities Commission, 301 U.S. 292, 57 S.Ct. 794, 81 L.Ed. 1093 (1937). This case involved the actions of an administrative board which took judicial notice of certain secret items (They refused to divulge them and not even the

Supreme Court could learn them.) The adversely affected party protested and moved for a hearing, but, of course, since this party could not even learn the facts being used against it, it certainly couldn't contest them.

The facts of this Ohio Bell case are in stark contrast to ours. In our case, the Petitioners well knew the Wyoming Supreme Court was contemplating taking judicial notice of the same kinds of official statistics of which it had taken judicial notice in a previous case; this was raised in oral argument. Then, after the Court took judicial notice, there was no proper challenge to this action by the Petitioners. Finally, each and every fact of which the Wyoming Supreme Court took judicial notice was openly spread upon the record.

In sum, the Petitioners can point to no violation of due process by the Wyoming Supreme Court.

II. The Petitioners have asserted before this Court, contrary to their positions before the other Courts involved in this action, that the protections of the Fifth and Fourteenth Amendments are not simply personal but that the Petitioners, as public

corporations and agencies of the State of Wyoming, are entitled to claim the protections of these provisions of the United States Constitution.

That is not the rule which this Court has enunciated. Williams v. Mayor and City Council of Baltimore, supra, 77 L.Ed. at 1020.

The Williams rule has been almost universally followed and state courts have frequently cited it and adhered to it. Warren County, Miss. v. Hester, 1951, 54 So. 2d 12, 219 La. 763, cert. den. 342 U.S. 877, 72 S.Ct. 167, 96 L.Ed. 659; Mitchell v. Williamson, 304 P.2d 314 (Okl. 1956). The rule is stated in terms that the word "person" as used in the Fourteenth Amendment cannot be taken to extend to a state or political subdivision thereof. South Carolina v. Katzenbach, 383 U.S. 301, 86 S.Ct. 803, 15 L.Ed. 2d 769, 784 (1966). Warren County, Miss. v. Hester, supra. The obvious reasoning involved in these cases is that since the purpose of the Fourteenth Amendment was to protect citizens of states ("persons") against actions by the state, it doesn't make any sense to call a state a "person" and thus to extend the rule so as to protect a state (or political subdivision thereof) from itself.

This same reasoning does not apply, however, to state constitutional provisions under which state courts have ruled that school districts have standing to challenge state school financing systems. For instance, in Washington, a state in which school districts have been accorded standing under the Washington Constitution to challenge that state's system of financing public education (Seattle School District Number One of King County v. State, 585 P.2d 71, at 82 (Wash. 1978)), it has been acknowledged that school districts would not have standing under the United States Constitution. Northshore School District v. Kinnear, 84 Wash. 2d 685, 530 P.2d 178, 222 (1974) (Stafford, J., dissenting).

The instant case seems a particularly inappropriate one to alter the well-established rule regarding standing under the Fourteenth Amendment for political subdivisions of a state. This is a case in which the Wyoming Supreme Court, dealing with matters specially within the interest of citizens of the State of Wyoming, has unanimously held that Wyoming's system of financing public education is unfair to great numbers of Wyoming's children, taxpayers, and school districts. Now two very wealthy

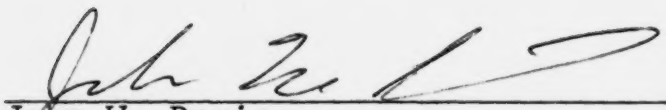
districts have come before this court seeking to preserve their privileged positions. Members of this Court, even when deciding that the federal constitution does not prohibit school financing systems such as Wyoming's, have still acknowledged the great unfairness of such systems and that actions to correct them are most appropriately within the province of the states themselves. San Antonio Independent School District v. Rodriquez, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16, 5860 (1973), (Stewart, J., concurring).

It seems best, therefore, that the State of Wyoming be allowed to resolve this matter itself.

CONCLUSION

The Wyoming Supreme Court has not violated any due process rights of the Petitioners but, in any event, the Petitioners have no standing to raise the question.

Respectfully submitted this 29th day of May, 1980.



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CERTIFICATE OF SERVICE

I hereby certify that on May 29th, 1980, three printed copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari have been served by certified mail, to the following counsel for Petitioners and Respondents:

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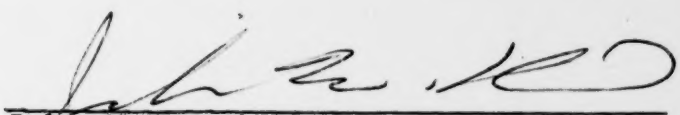

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II. JUDICIAL NOTICE

Rule 201. Judicial notice of adjudicative facts.

(a) *Scope of rule.* — This rule governs only judicial notice of adjudicative facts.

(b) *Kinds of facts.* — A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) *When discretionary.* — A court may take judicial notice, whether requested or not.

(d) *When mandatory.* — A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) *Opportunity to be heard.* — A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) *Time of taking notice.* — Judicial notice may be taken at any stage of the proceeding.

(g) *Instructing jury.* — In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

Wyoming Supreme Court note. — This rule does not affect the Uniform Judicial Notice of Foreign Law Act, §§ 1-12-301 through 1-12-306. Also unaffected by this rule are § 9-4-108 (d) and Rule 44.1, W.R.C.P.

Am. Jur. 2d, ALR and C.J.S. references. — 5 Am. Jur. 2d Appeal and Error §§ 606, 739, 740; 29 Am. Jur. 2d Evidence §§ 18, 22 to 122.

Uniform Judicial Notice of Foreign Law Act, 23 ALR2d 1437.

Reception of evidence to contradict or rebut matters judicially noticed, 45 ALR2d 1169.

Judicial notice of matters relating to public thoroughfares and parks, 48 ALR2d 1102.

Judicial notice of intoxicating quality, and the like, of liquor or particular liquid, from its name, 49 ALR2d 764.

Judicial notice of diseases or similar conditions adversely affecting human beings, 72 ALR2d 584.

Judicial notice of drivers' reaction times and of stopping distance of motor vehicles traveling at various speeds, 84 ALR2d 979.

Judicial notice as to assessed valuations, 42 ALR3d 1439.

Judicial notice as to location of street address within particular political subdivision, 86 ALR3d 484.

Federal or state law as governing federal court's authority, in diversity action after Erie R. R. v. Tompkins, to take judicial notice of law of sister state or foreign country, 7 ALR Fed 921.

What constitutes "adjudicative facts" within meaning of Rule 201 of Federal Rules of Evidence, concerning judicial notice of adjudicative facts, 35 ALR Fed 440.

4 C.J.S Appeal and Error § 1751; 5A C.J.S. Appeal and Error § 1604; 5B C.J.S. Appeal and Error § 1212; 31 C.J.S. Evidence §§ 6 to 102; 35A C.J.S. Federal Civil Procedure § 442.

III. PRESUMPTIONS

Rule 301. Presumptions in general in civil actions and proceedings.

(a) *Effect.* — In all civil actions and proceedings not otherwise provided for by statute or by these rules, a presumption imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence.

(b) *Inconsistent presumptions.* — If presumptions are inconsistent, the presumption applies that is founded upon weightier considerations of policy. If considerations of policy are of equal weight neither presumption applies.

Wyoming Supreme Court note. — This is the uniform rule except the added word "civil" in (a).

Appendix B

Brief of Points and Authorities

. . .

IV

THE PRESENT DECISION LACKS ADEQUATE STANDARDS AND GUIDELINES FOR COMPLIANCE THEREWITH AND IS INDEFINITE, VAGUE AND UNCERTAIN.

The court in the instant decision has stated:

> "We will hold the Wyoming system of school financing unconstitutional in that it fails to afford equal protection in violation of the Wyoming Constitution."

And has suggested, without recommendation,

". . . abolition of local school districts and placing all school administration on a statewide basis, to dividing the state into a few multi-county districts, to making all mineral, commercial and industrial property in the state subject to a state tax for school purposes. . ."

The court has said:

"We affirm the proposition that as nearly as practicable, funds derived from advalorem tax levies must be equally divided amongst the school districts of the entire state."

and has further stated:

"Equality of dollar input is manageable. There is no other viable criteria or test that the Appellees show to exist. . ."

The court also states:

"The goal in any case is to arrive at financial parity."

Yet the court further stated:

". . . we are not suggesting that each school district receive exactly the same number of dollars per pupil as every other school district. . . We hold that exact or absolute equality is not required. . . In fact, a flat rate per student distribution of available resources may generate a constitutionally offensive classification. . ."

The Appellees would concur with the latter statement, and, if allowed a factual hearing, do expect to prove and show that even when "all" resources (spendable money) are taken into consideration, if there is equality based on a doller per A.D.M., the result would be an extremely inequitable and unfair discrepancy in the quality of education provided to pupils within Wyoming by reason of the "educational cost differentials" and "variances in individuals, groups and local conditions" to which the court refers, but which were not specifically named or considered. The Affidavit and Exhibits attached hereto as Exhibit "A" should help

to illustrate that there are differences not attributable to dollars.

By reason of the foregoing, there is not now - and there cannot be until a factual hearing is held in this matter - any clear guidelines, standards or mileposts by which the legislature, the district court, the State Board of Education, or any other party can determine that any system of school financing is "in conformity" with the directive of this court to "convert to constitutional compliance" or has enacted a "constitutional body of legislation."

If this court is concerned about the time or expense of the development of factual matters upon which to base a decision and with which there might be identified the conditions and factors, other than dollars, which affect any effective uniform, equal, thorough and complete educational program, the Appellees hasten to assure the court that pages of statistics such as the court has developed and used in this matter, can be stipulated without hesitation whenever material or relavent. Other documented, reliable information can also be stipulated, but the Appellees would require that there be stipulated information in addition to that alleged or desired by the Appellants. There should be considered course offerings, comparative test scores and ratings from college admission tests, school vocational programs and their need or demand, most of which, with the concurrence of the Appellants could also be stipulated. Testimony would then relate to the identification of "education cost differentials" resulting from "variances in individuals, groups and local conditions" to which the court may be referring, but which are not otherwise

identified.

In addition, the court has choosen to pay no "particular attention" to the question of finances for the physical facilities and has only mentioned the capital construction entitlements which were only this past year given substantial funding by the legislature. Such funding is a substantial equalizing factor (and the entitlement of each school district is equally available in the office of the State Superintendent of Public Instruction). Such funds are available not only for necessary construction, but also for:

> ". . . a continuing building project, including restoration and repair of existing buildings or improvements which would conserve energy." W.S. 21-15-102.

Such expenditure is a necessary and substantial portion of the current expenditure of most school districts, at least in so far as funds are available. The capital construction entitlement makes such funds available and would thereby release other revenues for instructional purposes.

In addition thereto, a factual hearing will show the substantial equalizing effect which has resulted from an increase of 34% in the amount of classroom unit valuation paid under the Foundation Fund. Such classroom unit value was increased from $20,300.00 for the 1977-78 school year to $27,300.00 for the 1979-80 school year. W.S. 21-13-309.